

specification and similar to what was suggested in the Office Action. Withdrawal of the rejection is respectfully requested.

3. *The Prior Art Rejections*

Original claims 1-8 and 10-13 were rejected under §102(e) based on US Patent publication 2002/0079282 to Harrold et al. In addition, original claims 1, 5, 10 and 13 were rejected under §102(b) based on US Patent 5,201,440 to Gross ("Gross"). Original claim 4 was rejected under §103 based on Harrold et al. Original claims 1-13 were further rejected under §103 based on a proposed combination of US Patent 6,152,320 to Hierzer et al. and US Patent 4,592,480 to Hart et al. Applicant respectfully but strenuously traverses these rejections and respectfully submits that such rejections should not be applied to the claims now pending, for the reasons set forth below.

As Applicant has explained in the specification, the use of tamper evident security bands in plastic screw closures for bottles having a screw cap has been common for some time, but the use of such security bands on snap hinge closures has been much less common. In all of the snap hinge closures of which the inventors are aware, the body, the lid and the hinge of the closure is molded together in one piece and mechanical interlocking structure is formed in the body and/or the lid for causing the lid to become mechanically affixed to the body when the lid is pressed onto the body after manufacturing. This mechanical connection is designed to be defeated in a tamper evident manner, such as by rupturing of frangible bars or webs within the connection when the closure is first opened by a consumer.

Unfortunately, in too many circumstances the mechanical connections described above are able to be defeated without rupturing the tamper evident bars or webs by a person who is determined to do so. This, of course, is unacceptable for many different reasons. Prior to Applicant's invention, a need existed for an improved snap hinge tamper evident closure and a method for making such a closure that is impossible to open without defeating the tamper evident structure of the closure.

Applicant's two remaining independent claims read as follows:

1. A tamper evident snap-hinged closure, comprising:
a body portion that is constructed and arranged to be secured to a container;
a lid portion;
a hinge portion that is attached to said body portion and said lid portion so as to permit said lid portion to be opened from and closed on to said body portion after said closure is first opened; and
at least one tamper evident band mechanically securing said lid portion to said body portion at a position that is distal from said hinge portion, said tamper evident band being unitary at a first location with said body portion and further being unitary at a second location with said lid portion, whereby said closure may not be opened without defeating said tamper evident band, and wherein said tamper evident band is designed to remain attached to at least one of said body portion and said lid portion upon opening of said closure.

21. A tamper evident snap-hinged closure, comprising:
a body portion that is constructed and arranged to be secured to a container, said body portion comprising a drinking spout that is constructed and arranged to facilitate drinking from the container.;
a lid portion;
a hinge portion that is unitary with said body portion and said lid portion so as to permit said lid portion to be opened from and closed on to said body portion in order to selectively open and close said drinking spout after said closure is first opened; and
at least one tamper evident band mechanically securing said lid portion to said body portion at a position that is distal from said hinge portion, said tamper evident band being unitary at a first location with said body portion and further being unitary at a second location with said lid portion, whereby said closure may not be opened without defeating said tamper evident band.

Harrold et al. discloses a tamper evident dispensing closure having a partial breakaway cover that is frangibly connected to the lid part of the closure. Removal of the cover part exposes a lifting lip that extends from the lid part of the cover, permitting a user to lift the lid in order to open the lid part from the closure body. There is no disclosure or suggestion in this reference of a tamper evident band that is unitary at a first location with the

body portion and that is further unitary at a second location with the lid portion of the closure, as both of the independent claims require.

Hierzer et al. discloses a closure having an articulated lid. A tamper evident band 44 may be provided to provide a visual indicator for when the base portion of the closure has been removed from the container. There is no disclosure or suggestion, however, in this reference of a tamper evident band that is unitary at a first location with a body portion of a closure and that is further unitary at a second location with the lid portion of the closure, as Applicant's independent claims require.

Gross discloses a container closure having a closure body, a lid that is attached to the closure body by a hinge and a tamper evident projection 89 that extends from the lid portion of the closure, as is shown in Figure 7 of the reference. However, the tamper evident projection is not unitary at a first location with the body portion of the closure and further unitary at a second location with the lid portion of the closure, as Applicant's independent claims require. Instead, the tamper evident projection 89 includes an anchor 93 that is designed to become en been trapped within the base of the closure, as is shown in Figure 8 of the reference. This is precisely the type of mechanical interlocking arrangement that it is possible to mechanically defeat, as Applicant discussed in the Background of the Invention portion of the specification.

Hart et al. discloses tamper evidencing container caps for structures other than the snap hinge type closures that are set forth in Applicant's claims. In Hart, there is no hinge connection between the lower cover member 442 and the upper cover member 444. Instead, the upper cover member 444 slides with respect to the lower cover member 442, as may be visualized from viewing Figures 38-42. The tamper-evident member 474 that is removably connected to the upper and lower cover members 444, 442 thus has an entirely different operable mechanical relationship than does the securement of the body portion to the lid portion in the present invention and in the primary reference, Hierzer et al..

This securement in the present invention is made at a location that is distal from the hinge portion in order to minimize potential movement between the body portion and the lid portion while the tamper evident securement is still intact. In contrast, the upper and lower

cover members in the Hart reference may be freely moved with respect to each other, constrained only by the connection that is provided by the tamper evident member 474.

Moreover, it is the law that a Section 103 obviousness rejection involving the modification of the structure described in one or more references require some suggestion or incentive that would have led a person having ordinary skill to make the modification. As MPEP 2143 describes:

2143 Basic Requirements of a *Prima Facie* Case of Obviousness

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The Office Action does not even aver that any suggestion or motivation is present that would have led one of ordinary skill in the art to make the modifications that are proposed in the rejection. Accordingly, the rejection fails on its face to establish a *prima facie* case of obviousness. For that reason, withdrawal of the rejection and allowance of all of the claims still pending is respectfully solicited.

4. *Conclusion*

Applicant has made an earnest effort to place this application in condition for allowance. If the Examiner feels that a telephone interview would expedite prosecution of this patent application, she is respectfully invited to telephone the undersigned at 215-599-0600.

Respectfully submitted,

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